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## When lawyers sanction fraud

By Floyd Norris

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**NEW YORK:** If you are going to commit fraud, you may need a good lawyer. In some cases, you have to have a lawyer to pull off the fraud at all.

So it was in one of the simpler cases of e-mail "pump-and-dump," a case that has now ended in guilty pleas from two men who created and made millions from selling worthless stock in four companies that had no operations or assets but were touted in millions of lying e-mails.

In a companion civil case announced this week, the Securities and Exchange Commission says that a crucial part of the fraud was securing a legal opinion that newly issued stock could be traded immediately, despite a general rule that bars such trading unless the shares are registered with the SEC.

The SEC says letters proffering such a legal opinion regarding all four companies were provided by David Stocker, a Phoenix securities lawyer, and that the letters were "used as a pretext" for companies to issue millions of shares of purportedly unrestricted stock. Those shares were then sold for millions of dollars to suckers who received spam e-mails touting the stocks.

The men who used those letters, Stephen Luscko of Sarasota, Florida, and Gregory Alphonse Neu, of Boca Raton, Florida, have each been sentenced to five years in prison.

The letters were important because stock transfer agents rely on them in allowing unregistered shares to be traded. Normally, such shares are subject to rules that keep them from being traded for at least a year. But there are exceptions, and Stocker's letters said the shares fell into one exemption.

The SEC disagrees with that opinion, but it has not charged him with any wrongdoing. Through his lawyer, Donald Christie of Las Vegas, Stocker declined to comment.

In some pump-and-dump frauds, a legal opinion is crucial to getting the scam going. But it appears that the only cases in which the SEC has brought civil cases against lawyers who provided the opinions came when those lawyers also directly profited from selling the unregistered shares. No cases have been brought against lawyers who simply issued such opinions.

In this case, as in most e-mail pump-and-dump schemes, the shares were sold on the Pink Sheets, a market largely used to trade stocks of companies that are not registered with the SEC

"In the Pink Sheet trading of emerging companies, the fraud risk is the primary risk, not the investment risk," said R. Cromwell Coulson, the chief executive of the Pink Sheets. Many companies traded on the Pink Sheets are legitimate, he said, but some "seem to exist just to issue shares and press releases."

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Coulson said he was working to change that. Companies in which trading has been temporarily halted by the SEC, often because a pump-and-dump scheme appears to have been used, have a warning on the Pink Sheet Web site, although deciphering that warning is not easy.

More than 60 Pink Sheet companies that have been the subject of spam promotions now are blocked from having quotes posted, but that does not stop them from trading if investors put in orders.

Coulson said that by this summer he hopes to start putting a "skull-and-crossbones symbol" next to such stocks to warn investors off. He would also put a stop sign next to companies that do not make financial information available.

That could help investors who do their homework, but it is unlikely that group includes many of those who buy shares advertised in e-mails from people they do not know.

Coulson said the Pink Sheets had spotted eight lawyers with a history of submitting dubious opinions and told them they were no longer welcome to submit filings to the Pink Sheets on behalf of corporate clients.

But he would not name any of the lawyers. "They can do their own litigation for free," he explained.

Government action against lawyers who issue phony opinions but do not trade shares could be difficult, facing a defense that the lawyer acted in good faith even if the opinion was wrong. But such an action could serve as a deterrent to other lawyers tempted to make money by signing letters they know misstate the law.

That would not end fraud, but it might make it a little more difficult.

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